

**UNITED STATES DISTRICT COURT
FOR THE
DISTRICT OF NORTH DAKOTA**



**ADMINISTRATIVE POLICY
GOVERNING ELECTRONIC
FILING AND SERVICE**

Amended July 16, 2012

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I. General Information

- (A) Electronic filing is the process of uploading a document from a registered user's computer, by way of the court's internet-based Electronic Case Files (ECF) system, to the court's official case file and docket. The ECF system accepts documents in portable document format (PDF), preferably PDF/A (a standardized version of PDF specialized for the digital preservation of electronic documents). There are two main types of PDF documents, electronically converted PDFs and scanned PDFs. Electronically converted PDFs are created from word processing documents (MS Word, WordPerfect, etc.) using Adobe Acrobat or similar software. PDF/A documents can be created in both MS Word and Word Perfect. [See Guide for Creating PDF/A Documents](#). Scanned PDFs are created from paper documents run through an optical scanner. Electronically converted PDFs are the preferred type, and all PDFs submitted must be legible.
- (B) The use of ECF by attorneys is required. All documents must be filed using ECF, unless specifically exempted under [Section XI, Exceptions to Electronic Filing](#), of these Administrative Policies or unless an individual attorney receives leave of court to not use the system based upon a showing of good cause. Documents filed prior to November 18, 2005, are available in paper form only and may be reviewed at the clerk's office.
- (C) The electronic file maintained on the court's servers together with any paper documents filed in accordance with these Administrative Policies constitutes the official court record.
- (D) Each PDF file submitted on the ECF system must be no larger than 15 megabytes in size. Individual files larger than 15 megabytes must be subdivided prior to filing.
- (E) Any charges imposed upon users for viewing or downloading documents are dictated by the Judicial Conference of the United States Courts and are not charges imposed by this District. For additional information, visit the [Public Access to Court Electronic Records \(PACER\)](#) website.

II. Registration

- (A) Attorneys admitted to the bar of this court, including *pro hac vice* attorneys, must register with the court's ECF system prior to filing any pleadings. Registration must be on an [Attorney Registration Form](#) available on the court's web page. A registered user will be issued a login and password. Training for use of the ECF system is available from the clerk's office at no cost and is strongly encouraged for attorneys and staff. Please contact the clerk's office to schedule ECF training.

Bismarck Clerk's Office: 701-530-2300 Fargo Clerk's Office: 701-297-7000

- (B) A non-prisoner who is a party to a civil action, and who is not represented by an attorney, must obtain court approval and must attend ECF training to register as a user in the ECF system for the duration of their lawsuit. If, during the course of the action, the party retains an attorney who appears on the party's behalf, the clerk will terminate the party's registration in the ECF system upon the attorney's appearance. *Pro se* prisoners may not register to use the ECF system.
- (C) Only a user or authorized agent of a user may file a document using the user's login and password. Use of a user's login and password by an authorized agent will be deemed to be the act of the user. Law students practicing before the court under [D.N.D. Gen. L.R. 1.4](#) will be deemed an authorized agent of the supervising attorney, who must register as a user in the ECF system.
- (D) Registration constitutes consent to service of all documents by electronic means as provided by these Administrative Policies. See [Fed. R. Crim. P. 49\(e\)](#) and [Fed. R. Civ. P. 5\(d\)\(3\)](#).

III. User Obligations

- (A) Users have a continuing obligation to update their email address and change their password upon receipt of a login and password from the clerk's office. Users must contact the clerk's office regarding any other changes to their contact information.
- (B) Users must change their access password to the ECF system if they suspect the confidentiality of the password has been compromised.
- (C) A user must report any suspected misuse of the ECF system to the clerk. If the court becomes aware of misuse of the ECF system, a user may be subject to sanctions for failure to comply with these Administrative Policies, including but not limited to, revocation of access without prior notice.
- (D) A user must obtain court approval to withdraw from participating in the ECF system.
- (E) Attorneys registered to use the ECF system and who have been subject to professional disciplinary action in any jurisdiction are under an obligation to notify the court of such action. The court may order suspension or revocation of ECF access until such time as the attorney is in good standing to practice in this District in accordance with [D.N.D. Gen. L.R. 1.3](#).

IV. Deadlines

Filing documents electronically does not alter any filing deadlines. All electronic transmissions of documents must be received by the ECF system prior to midnight, Central Time, in order to be considered timely filed that day. Where a specific time-of-day deadline is set by court order or stipulation, the electronic filing must be completed by that time.

V. Filing and Service of Civil Case Opening Documents

- (A) Civil case opening documents, such as a complaint, petition, or notice of removal together with the civil cover sheet ([Form JS-44](#)), should be submitted either electronically in PDF format attached to an e-mail, on electronic media, or in paper form. Any case opening documents submitted in paper form will be scanned and electronically filed by the clerk and then destroyed consistent with the policies of the National Archives and Records Administration. The clerk's e-mail address for civil case opening is:

ndd_newcaseBismarck@ndd.uscourts.gov (for filing in Western Divisions)

ndd_newcaseFargo@ndd.uscourts.gov (for filing in Eastern Divisions)

- (B) No case will be opened until the appropriate filing fee or a motion to proceed *in forma pauperis* (IFP) is received by the clerk's office.
- (C) All attachments and exhibits to case opening documents must be submitted as separate documents. Attachments and exhibits may be submitted electronically in PDF format or in paper form. All attachments must be redacted, pursuant to [Fed. R. Civ. P. 5.2](#) and [Fed. R. Crim. P. 49.1](#).
- (D) The clerk's office will prepare the summons, imprint the seal of the court and the clerk's signature on the summons, and issue the summons electronically to counsel by way of e-mail or by U.S. Mail in paper form. A party may not electronically serve a civil complaint and summons but must print or use a court issued summons and effect service in accordance with [Fed. R. Civ. P. 4](#).
- (E) The Court's Plan for Direct Assignment of Civil Cases to a Magistrate Judge governs the manner in which civil cases are assigned. If a civil case is directly assigned to a Magistrate Judge, the parties will be required to submit a Consent/Reassignment Form. Additional Information is available in the [Direct Assignment Plan](#).

VI. Filing of Documents Adding or Removing a Party

Any document that adds or removes a party to or from a case, such as an amended complaint or a third party complaint, must be submitted to the clerk's office in PDF format either attached to an e-mail, on electronic media, or in paper form. Users are not permitted to add or remove parties to a case. These documents should be sent to the appropriate new case e-mail address set forth in [Section V, Filing and Service of Civil Case Opening Documents](#).

VII. Filing a Notice of Appeal

A notice of appeal should be submitted in PDF format either attached to an e-mail, on electronic media, or in paper form. A notice of appeal should be sent to the appropriate new case e-mail address set forth in [Section V, Filing and Service of Civil Case Opening Documents](#).

VIII. Electronic Filing

- (A) Electronic transmission of a document to the ECF system, together with the generation of a Notice of Electronic Filing (NEF) as explained in [Section IX, Service of Electronically Filed Documents](#), constitutes filing of the document for all purposes of the Federal Rules of Procedure and constitutes entry of the document on the docket maintained by the clerk pursuant to [Fed. R. Civ. P. 58](#), [Fed. R. Civ. P. 79](#), [Fed. R. Crim. P. 49](#), and [Fed. R. Crim. P. 55](#).
- (B) A document filed electronically will be deemed filed at the time and date stated on the NEF.
- (C) All pleadings filed electronically must be titled using the appropriate [civil](#) or [criminal](#) event code.

IX. Service of Electronically Filed Documents

- (A) Registration as an ECF user constitutes consent to service by electronic means when permitted by the Federal Rules of Procedure.

The Notice of Electronic Filing (NEF) has a dual function.

- (1) The system generates an NEF each time a document is filed. This NEF is the filer's confirmation that the transaction has been successfully completed and the document is deemed to be filed.
 - (2) The system sends an NEF via email to registered users, which constitutes service except as noted below. Parties who are not registered users of the ECF system must be served by traditional means.
- (B) All documents filed using the ECF system must include a certificate of service. The certificate of service must identify the manner in which the service on each party was accomplished. A [sample certificate of service form](#) is available on the court's web page. The certificate of service may be included as the last page of a document or filed separately.
- (C) The filer must serve a paper copy of any electronically filed document on attorneys and *pro se* litigants who are not registered to use the ECF system. Parties who are not registered users will be identified in the NEF.
- (D) Unsealed Cases. Filing a motion for leave to file under seal, filing a sealed document, or filing a sealed motion will generate and send an NEF. Parties in the case who are registered users will receive the NEF but will not be able to view the linked sealed document without incurring a PACER charge. The filer must accomplish service of these documents by traditional means. See [Fed. R. Civ. P. 5](#) and [Fed. R. Crim. P. 49](#).

UNSEALED CASES			
Document Type	NEF Generated	NEF Sent	Service by Traditional Means Required
Motion for Leave to File Under Seal	Yes	Yes*	Yes
Sealed Document	Yes	Yes*	Yes
Sealed Motion	Yes	Yes*	Yes
Ex Parte Motion	Yes	Yes, to <u>only</u> the filer and the Court	No
All Other Documents	Yes	Yes	No

*Because PACER charges may be incurred for viewing these documents, service must be accomplished by traditional means.

- (E) Sealed Cases. Filing any document in a sealed case will generate an NEF, but the NEF will not be sent. The filer must accomplish service of all documents on all parties by traditional means. See [Fed. R. Civ. P. 5](#) and [Fed. R. Crim. P. 49](#).

SEALED CASES			
Document Type	NEF Generated	NEF Sent	Service by Traditional Means Required
Ex Parte Motion	Yes	No	No
All Other Documents	Yes	No	Yes

X. Signatures

- (A) Attorneys and Pro Se Users. The user login and password will serve as that user's signature for purposes of [Fed. R. Civ. P. 11](#) and for all other purposes under the Federal Rules of Procedure and the Local Rules of Court. All electronically filed documents must include a signature block and must set forth the attorney's name, address, telephone number, and e-mail address. The name of the user under whose login and password the document is submitted must be preceded by a "/s/," "/s" or "s/" and typed in the space where the signature would otherwise appear. A digital image of a signature may be inserted in the document in lieu of the "/s/," "/s" or "s/."

The following are examples of permissible signature blocks:

s/ Richard Smith

Richard Smith

222 4th Street

Anywhere, USA 58201

701-123-4567

rsmith@internetprovider.com

/s/ Richard Smith

Richard Smith

222 4th Street

Anywhere, USA 58201

701-123-4567

rsmith@internetprovider.com

- (B) Clerk's Office Staff and United States Probation and Pretrial Services Staff. Clerk's office staff and United States probation and pretrial services staff may use an electronic signature when signing documents. The electronic signature must be preceded by a "/s/," "/s" or "s/" and typed in the space where the signature would otherwise appear. A digital image of a signature may be inserted in the document in lieu of the "/s/," "/s" or "s/."
- (C) Multiple Signatures. The filer of any document requiring more than one signature (*e.g.*, stipulations) must list the names of all other signatories by means of a "/s/," "/s" or "s/" signature block for each or a digital image of the signature. By submitting a document for filing, the user certifies that each of the other signatories has expressly agreed to the form and substance of the document and that the user has their actual authority to submit the document electronically. The user must retain any records evidencing this concurrence for future production, if necessary, until the entry of a final non-appealable judgment, or for two years, whichever is later.
- (D) Affidavits. Unless a specific exception in these Administrative Policies applies, affidavits must be filed electronically; however, the electronically filed version must contain a digital image of a signature or the "/s/," "/s" or "s/" signature block indicating that the paper document bears an original signature. The user must retain the original for future production, if necessary, until the entry of a final non-appealable judgment, or for two years, whichever is later.
- (E) Objections to Authenticity. A non-filing signatory or party who disputes the authenticity of an electronically filed document containing signatures must file an objection to the document within ten (10) days of the date on the NEF.
- (F) Defendants in Criminal Cases. Any document requiring a defendant's signature must actually be signed by the defendant, scanned, and electronically filed. The United States probation and pretrial services office may submit court forms containing a "/s/," "/s" or "s/" signature block, or a digital image of the signature of a probationer, if the original is retained by that agency for future production.

XI. Exceptions to Electronic Filing

- (A) Documents that may be filed in paper and will not be scanned into ECF by the clerk's office:
- (1) administrative records in review proceedings of federal and state agency actions;

- (2) state court records in habeas corpus cases filed under [28 U.S.C. § 2254](#) including Habeas Rule 5 materials;
 - (3) trial exhibits; and
 - (4) items that cannot be converted to PDF format (e.g., video tapes or oversized documents).
- (B) Documents that may be filed in paper and will be scanned into ECF by the clerk's office:
 - (1) pleadings and documents filed by prisoners;
 - (2) pleadings and documents filed by *pro se* litigants who are not registered users of ECF;
 - (3) [Fed. R. Crim. P. 20](#), [Fed. R. Crim. P. 21](#) and [Fed. R. Crim. P. 40](#) transfer papers;
 - (4) pleadings and documents for opening a case or appeal; and
 - (5) pleadings and documents in a removal matter under [28 U.S.C. § 1446](#).
- (C) Users of the ECF system must obtain leave of court to file paper documents in any other instance. See [Section I\(B\), General Information](#), for the requirements for using the ECF system.

XII. Motions

- (A) Motions should be filed using the appropriate civil or criminal event code. If a motion is seeking multiple forms of relief from the court (i.e., motion to dismiss and motion for hearing), both motion reliefs should be selected when filing the motion. See [Guide for Filing Multiple Relief Motions](#) for more information.
- (B) A memorandum in support of a motion must be filed separately using the memorandum in support event. See [Sections XIII, Attachments to Filings and Exhibits](#), and [XIV, Transcripts](#), for more information about filing exhibits, attachments, and transcripts.
- (C) Proposed orders must NOT be filed. See [Section XXI\(B\), Proposed Documents](#), for additional information.

XIII. Attachments to Filings and Exhibits (other than hearing and trial exhibits)

- (A) Attachments to pleadings and motions must be filed in PDF format in file size increments that do not exceed the 15 megabyte limitation. Each individual attachment must be filed separately and must contain an exhibit letter or number, if applicable, and a description of sufficient detail to make the attachment readily identifiable to the court. Abbreviations may be used sparingly. See [Guide to Filing Attachments](#).
- (B) **Filers must not attach as an exhibit any pleading or other paper already on file with the court in that case, but must instead refer to the docket number assigned to the document in ECF.**

XIV. Transcripts

- (A) Transcripts of non-court proceedings. Non-court generated transcripts (*e.g.*, deposition transcripts from private reporters) that are filed to support any motion or pleading must be filed in PDF format in accordance with [Section XIII, Attachments to Filings and Exhibits](#), and must be filed in their entirety. The use of partial excerpts as attachments to motions is not allowed and is not a substitute for the requirement of filing the entire transcript. Also, it is preferred that the transcripts be electronically converted to PDF from word processing formats, rather than scanned, so the transcripts can be more readily searched. It is the filer's responsibility, not the court or clerk's office, to ensure that transcripts are properly redacted to comply with the Privacy provisions of these Administrative Policies. See [Section XIX, Privacy](#).
- (B) Transcripts of court proceedings.
- (1) A transcript provided to the court by a court reporter or transcriber will be available at the public terminal in the office of the clerk for inspection only, for a period of 90 days after it is delivered to the clerk. The transcript may not be printed.
 - (2) During the 90-day period, a copy of the transcript may be obtained from the court reporter or transcriber at the rate established by the Judicial Conference, the transcript will be available within the court for internal use, and an attorney who obtains the transcript from the court reporter or transcriber may obtain remote electronic access to the transcript through the court's CM/ECF system.
 - (3) After the 90-day period has ended, the filed transcript will be available for inspection and printing in the clerk's office and for download from the court's CM/ECF system through the judiciary's PACER system. PACER fees will apply to electronic access even if the transcript has been purchased by the person seeking electronic access. Transcripts are not subject to the maximum per document fee charged by PACER. The per page fee will be charged for each page of the transcript.

XV. Sealed Cases and Sealed Filings

- (A) Parties must obtain leave of court to file a sealed document or a sealed motion. See [Guide to Filing Sealed Documents & Motions](#). If the court grants leave to file a sealed motion or sealed document, no additional leave is required for a responsive filing. For additional information, see the Court's [Standing Order re: Sealed Documents](#).

(B) Sealed Cases and Documents.

- (1) Sealed cases are not available to the public. Non-case participants who attempt to access a sealed case will receive a message that the case is sealed and not available for viewing.
- (2) Motions for leave to file under seal, sealed documents, sealed motions, responses to sealed motions, replies to sealed motions, and sealed orders are not available to the public. Non-case participants who attempt to access sealed documents or motions will receive a message that they do not have permission to view the document.

(C) Service.

- (1) Unsealed Cases. Filing a motion for leave to file under seal, filing a sealed document, or filing a sealed motion will generate and send an NEF. Parties in the case who are registered users will receive the NEF but will not be able to view the linked sealed document. The filer must accomplish service of a motion for leave to file under seal, a sealed document, or a sealed motion on all parties by traditional means. See [Fed. R. Civ. P. 5](#) and [Fed. R. Crim. P. 49](#).
- (2) Sealed Cases. Filing any document in a sealed case will generate an NEF, but the NEF will not be sent. The filer must accomplish service of all documents on all parties by traditional means. See [Fed. R. Civ. P. 5](#) and [Fed. R. Crim. P. 49](#).

UNSEALED CASES					
	Party access to docket text & documents	Public access to docket text	Public access to documents	NEF Sent	Service by Traditional Means Required
Motion for Leave to File Under Seal	Yes*	Yes	No	Yes	Yes
Sealed Document	Yes*	Yes	No	Yes	Yes
Sealed Motion	Yes*	Yes	No	Yes	Yes

*Because PACER charges may be incurred for viewing these documents, service must be accomplished by traditional means.

SEALED CASES					
	Party access to docket text & documents	Public access to docket text	Public access to documents	NEF Sent	Service by Traditional Means Required
All Documents	Yes	No	No	No	Yes

XVI. *Ex Parte* Motions

- (A) Leave of court is not required to file an *ex parte* motion.
- (B) *Ex parte* motions are available only to the court and the filing party. The *ex parte* motion will not appear on the public docket sheet. Only the filer and the court will have knowledge that an *ex parte* motion has been filed.
- (C) Filing an *ex parte* motion will generate an NEF, but it will be sent to only the court and the filing party.

EX PARTE MOTIONS					
	Party access to docket text & documents	Public access to docket text	Public access to documents	NEF Sent	Service by Traditional Means Required
<i>Ex Parte</i> Motions	No	No	No	Yes, to <u>only</u> the filer and the Court	No

XVII. Stipulations

Stipulations must conform to [Section X\(C\), Multiple Signatures](#). Proposed orders must not be submitted with stipulations unless requested by the court.

XVIII. Hyperlinks

- (A) Documents filed on the ECF system may contain hyperlinks but they must be limited to links to material within the filed document or to a location on the internet that contains a source document for a citation.
- (B) Hyperlinks to cited authority may not replace standard citation format. Complete citations must be included in the text of the filed document. Neither a hyperlink, nor any site to which it refers, will be considered part of the record. Hyperlinks are simply convenient mechanisms for accessing material cited in a filed document.

- (C) The court accepts no responsibility for, and does not endorse, any product, organization, or content at any hyperlinked site. The court accepts no responsibility for the availability or functionality of any hyperlink.

XIX. Privacy

- (A) The redaction of electronically filed documents is governed by [Fed. R. Civ. P. 5.2](#) and [Fed. R. Crim. P. 49.1](#).
- (B) The responsibility for complying with [Fed. R. Civ. P. 5.2](#) and [Fed. R. Crim. P. 49.1](#) rests solely with the user. The clerk's office will not review filings for compliance with these rules.
- (C) If a redacted document is filed, the user must retain the original document for future production, if necessary, until the entry of a final, non-appealable judgment, or for two years, whichever is later.

XX. Orders, Judgments and Other Court-issued Documents

- (A) Electronic transmission of all orders, judgments, and proceedings of the court to the ECF system constitutes filing of the document for all purposes of the Federal Rules of Procedure and constitutes entry of the document on the docket maintained by the clerk pursuant to [Fed. R. Civ. P. 58](#), [Fed. R. Civ. P. 79](#), [Fed. R. Crim. P. 49](#), and [Fed. R. Crim. P. 55](#).
- (B) Any order, judgment or court-issued document filed in the ECF system has the same force and effect as if the judge or clerk had signed a paper copy and filed it in the conventional manner.
- (C) A judge may grant routine orders by a text-only entry upon the docket. No PDF document will be attached. The text-only entry will constitute the court's only order on the matter. An NEF will be generated and sent. The NEF will indicate "no document attached" and will not contain a hyperlink to a document. Parties who are not registered users will be mailed a paper copy of the NEF.
- (D) A paper copy of electronic filings generated by the court will be mailed by the clerk to parties not registered on the ECF system.

XXI. Proposed Documents

- (A) A party seeking leave of court to file a proposed document (*e.g.*, amended complaint, modification to scheduling order, brief in excess of page limitations) must submit the proposed document as an attachment to the motion for leave to file. The court will rule on the motion, and if granted, will direct the party to file an electronically signed original. See [Section XIII, Attachments to Filings and Exhibits](#), for information on attachments.

- (B) Proposed orders must NOT be filed. When requested by the Court, the proposed orders should be emailed to the appropriate chambers email address in either Word or WordPerfect format.

XXII. Correspondence

Correspondence must not be filed in the ECF system. Any request for court action must be filed in pleading format.

XXIII. Facsimile Transmissions

No pleadings or other documents may be submitted to the court for filing by facsimile transmission.

XXIV. Filing Errors, Docket Corrections, and E-filing Modification Requests

- (A) Any filing errors by a filer will be brought to the filer's attention by the clerk's office and may require correction by the filer.
- (B) A user who discovers a filing error should contact the clerk's office:
- | | | |
|-----------|----------------------|--|
| Bismarck: | Toll Free Help Desk: | 1-866-827-3601 |
| | Clerk's Office: | 701-530-2300 |
| | E-mail: | ndd_helpdeskBismarck@ndd.uscourts.gov |
| Fargo: | Toll Free Help Desk: | 1-866-841-5126 |
| | Clerk's Office: | 701-297-7000 |
| | E-mail: | ndd_helpdeskFargo@ndd.uscourts.gov |
- (C) When an error is corrected, the clerk's office will file a Docket Correction in ECF advising all parties of the correction. If the clerk's office needs a filer to take any action to assist in correcting an error, the clerk's office will file an E-filing Modification Request in ECF advising all parties of the action needed by the filing party.

XXV. Technical Failures

A user whose filing is made untimely as the result of a technical failure may seek appropriate relief from the court, using the contact information set forth in [Section XXIV, Filing Errors, Docket Corrections, and E-filing Modification Requests](#).

When the ECF system is down for system upgrades or due to other technical difficulties, filing may be sent to the new case email address set forth in [Section V, Filing and Service of Civil Case Opening Documents](#) and will be filed by the clerk's office as of the date the court received the document(s).

XXVI. Retention

Unless otherwise ordered by the court, documents submitted to the clerk for filing on paper or digital storage media will be destroyed after uploading into the ECF system consistent with the policies of the National Archives and Records Administration.

XXVII. Access to Electronically Stored Documents

- (A) Public access to the civil and criminal dockets and documents in the ECF system is provided through the Public Access to Court Electronic Records (PACER) system. A PACER login and password can be obtained from the [PACER service center](#). Additional information is available at [PACER's website](#). The court's ECF records can be reviewed using a PACER account.
- (B) All filings that are not sealed may be viewed on the public computer terminal located at the clerk's office.